

ENFORCEMENT OPTIONS WITH ALCOHOL-IMPAIRED DRIVERS

DO NOT DETAIN THEM:

Release the individual and allow them to go on their way. Out of all of the options, this option feels the most counter-intuitive for Border Patrol agents. If you allow this driver to continue down the road and they kill someone, aren't you liable? The answer is no. There is no legal requirement for a Border Patrol agent to intervene in a state crime, including a DUI. Therefore, there is generally no liability that will attach to the agent or agency for failing to act in this situation.

DETAIN THE IMPAIRED INDIVIDUAL AT THE REQUEST OF A STATE/LOCAL LEO:

There is no duty to detain the alcohol-impaired individual; but if you do, this option can raise potential liability for the agent and the agency. However, Chapter VI of the M-69 states that it is "policy for [CBP] to cooperate with local and state law enforcement officers who notify [CBP] of suspected violations under state law." Thus, it is likely that a Border Patrol agent, based on his observations during an encounter, would be considered to have been acting within the course and scope of his employment while detaining an alcohol-impaired driver at the request of a state/local LEO. In this situation, the agent may have immunity from a personal civil lawsuit, depending on the facts of the case.

DETAIN THE IMPAIRED INDIVIDUAL WITHOUT A REQUEST FROM A STATE/LOCAL LEO:

This option poses the greatest liability for both the agent and the agency. The M-69 states that, "Unless specifically authorized as a peace officer under state law, the agent's authority in these situations is that of an ordinary citizen." Unless cross-designated, Border Patrol agents are not peace officers under Arizona law. However, in Arizona, a private citizen may arrest someone for a felony or misdemeanor that amounts to a breach of peace. While a DUI is considered a misdemeanor breach of peace, the particulars of each individual case will determine if it meets that threshold. Be advised, this option poses the greatest threat to an agent for a civil lawsuit.